

TENNESSEE REGULATORY AUTHORITY

Sara Kyle, Chairman
Lynn Greer, Director
Melvin Malone, Director



460 James Robertson Parkway
Nashville, Tennessee 37243-0505

MEMORANDUM

TO: Chairman Sara Kyle
Director Lynn Greer
Director Melvin Malone

FROM: Eddie Roberson, Chief, Consumer Services Division *ER*
Ed Mimms, Manager, Do Not Call Program *EM*
Lynn Questell, Counsel *LQ*

DATE: May 16, 2002

SUBJECT: Settlement with Grandview Cemetery Company ("Grandview")
(Docket No. 02-00494)

Attached is a Settlement Agreement between the Consumer Services Division ("Staff") and Grandview for alleged violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statute, TCA § 65-4-401 *et seq.* Grandview re-registered with the Authority's Do Not Call Program on April 3, 2002.

Grandview originally registered with the Authority's Do Not Call Program on July 20, 2000. When registration renewal became due for 2001, the Authority notified Grandview twice of its need to re-register. Grandview did not re-register for 2001. On March 20, 2002, the Authority received a complaint against Grandview alleging that the company violated TCA § 65-4-401 *et seq.* during a solicitation call that occurred on March 6, 2002. Grandview was not registered with the Authority at the time of the alleged violations of TCA § 65-4-401 *et seq.* Upon notification, Grandview re-registered with the Authority and expressed interest in settling the matter. The Authority has not received any additional Do Not Call complaints against Grandview since March 20, 2002.

This Settlement requires Grandview to make a payment of \$3,500 to the Authority along with assurances from the Company that it will fully comply with applicable state law. The terms of this Settlement require Grandview to pay \$2,000 to the Authority no later than thirty (30) days from the date the Authority ratifies the Settlement with the remaining balance to be paid in two (2) installments of \$1,000 and \$500 no later than the first business day of each month for the next two (2) months. A representative of Grandview will be available telephonically for the June 11, 2002 Conference to answer any question you may have.

Considering all relevant facts including the Company's size, financial status, good faith response to the Authority's investigation and the gravity of the violations, the Staff believes the terms of this Settlement are fair and reasonable and should have the result of no additional telemarketing complaints being filed against Grandview. Staff submits the attached Settlement Agreement for your deliberation at the May 21, 2002 Authority Conference.

cc: David Waddell, Executive Secretary
Richard Collier, General Counsel
Lee Chambers, President, Grandview Cemetery

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

RECEIVED
CONSUMER SERVICES DIVISION

MAY 14 2002

TN REGULATORY AUTHORITY

IN RE:

ALLEGED VIOLATIONS OF TENN.
CODE ANN. §65-4-401 *et seq.*, DO-NOT-
CALL SALES SOLICITATION LAW,
AND RULES OF TENNESSEE
REGULATORY AUTHORITY, CHAPTER
1220-4-11, BY:

GRANDVIEW CEMETERY COMPANY

DOCKET NO. 02-00494

DO-NOT-CALL PROGRAM
T02-00182
FILE NUMBERS

SETTLEMENT AGREEMENT

This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and Grandview Cemetery Company ("Grandview Cemetery" or the "Company"). This Settlement Agreement pertains to one (1) complaint received by the CSD alleging that Grandview violated the Tennessee Do-Not-Call Telephone Sales Solicitation law and its concomitant regulations, TENN. CODE ANN. § 65-4-401, *et seq.*, and TENN. COMP. R. & REGS. 1220-4-11.07, and is subject to the approval of the Directors of the TRA.

TENN. CODE ANN. § 65-4-404, and TENN. COMP. R. & REGS. 1220-4-11.07(1), prohibit persons from knowingly making or causing to be made telephone sales solicitation calls to residential subscribers in this state who have given timely and proper notice to the

TRA of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(d) requires that persons or entities desiring to make telephone solicitations to residential subscribers shall pay an annual registration fee and obtain the Do-Not-Call Register prior to conducting such telephone solicitations. Tenn. Comp. R. & Reg. 1220-4-11-.04(4) provides that the annual fee to register in the Do-Not-Call Program shall be paid by May 1st of each year and “shall cover the time period from the following July 1st through June 30th of the following years or any part thereof.”

Grandview Cemetery registered in the Tennessee Do-Not-Call Program as a solicitor on July 20, 2000. On two (2) separate occasions between April and July 2001, the CSD provided Grandview Cemetery with written notice regarding the expiration of its registration in the Do-Not-Call Program on June 30, 2001. Grandview Cemetery did not re-register in the Do-Not-Call Program in 2001.

The CSD’s investigation in this docket commenced after it received a complaint on March 20, 2002 alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Grandview Cemetery on March 6, 2002. The CSD provided the Company with notice of this complaint on March 28, 2002.

TENN. CODE ANN. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum fine faced by Grandview Cemetery in this proceeding is four thousand dollars (\$4,000), arising from the one (1)

telephone solicitation and the Company's failure to re-register in the Do-Not-Call Program.

In negotiating this Settlement Agreement, CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b), including the Company's size, financial status, good faith, and the gravity of the violation. Grandview Cemetery is located in Maryville, Tennessee. It employs approximately ten (10) persons in the state of Tennessee. During the investigation of the complaints, Grandview Cemetery exhibited good faith in its efforts to resolve this matter. After receiving notice of the complaints, Grandview Cemetery immediately contacted the CSD and expressed an interest in resolving this matter. In addition, Grandview Cemetery re-registered with the TRA as a telephone solicitor on April 3, 2002. CSD has received no additional complaints from Tennessee consumers since Grandview Cemetery received notice of the violations.

In an effort to resolve these complaints, represented by the file numbers above, CSD and Grandview Cemetery agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:

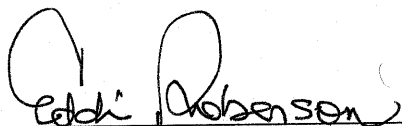
1. Grandview Cemetery admits that the one (1) complaint against it is a true and valid complaint and that it acted in violation of TENN. CODE ANN. §65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1).
2. Since receiving notice of the complaints that are the subject of this Agreement, Grandview Cemetery has exhibited good faith in its efforts to come into compliance with TENN. CODE ANN. § 65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1). Grandview Cemetery contacted CSD and expressed an interest in resolving this matter.

In addition, Grandview Cemetery re-registered with the TRA as a telephone solicitor on April 3, 2002 and receives a monthly copy of the Do-Not-Call register.

3. Grandview Cemetery agrees to pay three thousand five hundred dollars (\$3,500.00) in settlement of these complaints, and agrees to remit the amount of two thousand dollars (\$2,000.00) to the Office of the Executive Secretary of the TRA no later than thirty days from the date the Directors of the TRA approve this Settlement Agreement.¹ The remaining two (2) installments of one thousand dollars (\$1,000.00) and five hundred dollars (\$500.00) respectively shall be remitted to the TRA no later than the first business day of each month for the next two (2) consecutive months. Upon payment of the amount of three thousand five hundred dollars (\$3,500.00) in compliance with the terms and conditions of this Settlement Agreement, Grandview Cemetery is excused from further proceedings in this matter.
4. Grandview Cemetery agrees to comply with all provisions of the Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations.
5. If any clause, provision or section of this Settlement Agreement shall, for any reason, is held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

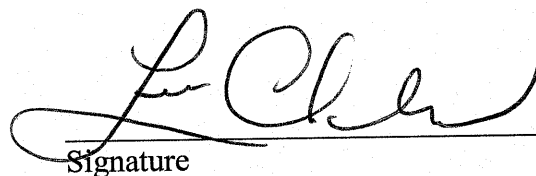
¹ The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, sent to 460 James Robertson Parkway, Nashville TN 37243, referencing TRA Docket No. 02-00494.

6. This Settlement Agreement represents the entire agreement between the parties, and there are no representation, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.
7. Grandview Cemetery agrees that a company representative will participate telephonically in the Authority Conference during which the Directors consider this Settlement Agreement.
8. In the event that Grandview Cemetery fails to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket. Grandview Cemetery shall pay any and all costs incurred in enforcing the Settlement Agreement.



Eddie Roberson
Chief, Consumer Services Division
Tennessee Regulatory Authority

5/15/02
Date



Signature

LEE CHAMBERS
Print Name

PRESIDENT
Print Title

5-8-02
Date